

OPEN MEETING ITEM

11/18/04



0000013076

COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



BRIAN C. McNEIL
EXECUTIVE SECRETARY

SECURITIES DIVISION
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Phoenix, AZ 85007
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ARIZONA CORPORATION COMMISSION

MEMORANDUM

DOCKETED

NOV - 8 2004

DOCKETED BY	<i>[Signature]</i>
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AZ CORP COMMISSION
DOCUMENT CONTROL

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RECEIVED

TO: Marc Spitzer, Chairman
William A. Mundell
Jeff Hatch-Miller
Mike Gleason
Kristin K. Mayes

FROM: Matthew J. Neubert *[Signature]*
Director of Securities

DATE: November 2, 2004

RE: James L. Oppenheimer

S-03500A-04-0000

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed Order for Relief and Consent to Same, fully executed by Respondent James L. Oppenheimer, ordering Oppenheimer to cease and desist from violations of the Securities Act and to pay restitution and penalties for the sale of unregistered and non-exempt securities in the form of viaticals.

Oppenheimer sold these securities to six investors, including sales while he was registered as a securities salesperson under Franklin Financial Services Corporation, a registered dealer in Arizona. Oppenheimer did not report his activity to his dealer, and the transactions were not recorded on the books and records of his dealer as required. Oppenheimer was permitted to resign from employment with Franklin Financial Services on June 27, 2002.

Oppenheimer's securities salesperson's registration terminated in June, 2002 and investment advisor representative's registration lapsed in December, 2001. Oppenheimer has agreed not to reapply for registration as a securities salesperson or dealer, or licensing as an investment advisor or investment advisor representative in Arizona at any time in the future, pursuant to the proposed Order.

Oppenheimer has agreed to pay \$5,000 in penalties and \$15,410.11 in restitution. The restitution amount represents the commissions that Oppenheimer received for selling the viaticals. Oppenheimer has delivered to the Division cashier checks, in full, for the above

amounts. Oppenheimer has agreed to cooperate with the Division in connection with any investigation or hearing regarding the allegations asserted in this matter or any related matters.

To date, investors have not received any disbursements from their investments. Upon approval of the order by the Commission, the restitution will be distributed to the investors in proportion to their investment.

Originator: Ella G. Johnson

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
KRISTIN K. MAYES

7 In the matter of)

DOCKET NO. S-03500A-04-0000

8 JAMES L. AND SYDNEY J.
9 OPPENHEIMER, Husband and wife
695 W. Bear Claw Lane
10 Pinetop, AZ 85935

DECISION NO. _____

11 Respondents.)

**ORDER TO CEASE AND DESIST, ORDER
OF RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES AND
12 CONSENT TO SAME
13 BY: JAMES L. AND SYDNEY J.
OPPENHEIMER**

14 Respondents James L. and Sydney J. Oppenheimer elect to permanently waive any right to
15 a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801
16 *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order of Restitution,
17 Order for Administrative Penalties and Consent to Same ("Order"). Respondents admit the
18 jurisdiction of the Arizona Corporation Commission ("Commission"); neither admit nor deny the
19 Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this
20 Order by the Commission.

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I.

FINDINGS OF FACT

1. Respondents James L. and Sydney J. Oppenheimer, reside at 695 W. Bear Claw Lane, Pinetop, AZ 85935.

2. Sydney J. Oppenheimer ("RESPONDENT SPOUSE") was at all relevant times the spouse of James L. Oppenheimer. Sydney J. Oppenheimer is joined in this action under A.R.S. §44-2031(C) solely for purpose of determining the liability of the marital community.

3. At all times relevant, James L. Oppenheimer ("RESPONDENT") was acting for his own benefit, and for the benefit or in furtherance of the marital community of James L. and Sydney J. Oppenheimer.

4. James L. and Sydney J. Oppenheimer may be collectively referred to as ("RESPONDENTS").

5. In March 1999, Respondent entered into a "Sales Agency Agreement" (the "Agreement") with Mutual Benefits Corporation ("MBC"), a viatical company located at 2881 E. Oakland Park Blvd., Suite 200, Ft. Lauderdale, Florida 33306, to sell MBC's products consisting of viatical and senior or life settlement contracts. The Agreement provided for commission payments ranging from 5 – 10% on each sale.

6. Between April 1999 and April 2001, Respondent offered for sale and sold twelve MBC viatical settlement contracts to six Arizona investors for a total of approximately \$217,573. MBC paid Respondent \$15,410.11 in commissions for these Arizona sales.

7. The viatical settlement contracts sold by Respondent were not registered under the Securities Act nor were they exempt from registration.

8. Respondent was, at all relevant times, a registered securities salesman, NASD CRD #353135, in association with securities dealer Franklin Financial Services Corporation ("FFSC"), NASD CRD #5435.

1 9. FFSC's selling away policies required its representatives to disclose to and receive
2 authorization from FFSC to engage in outside business activities and private securities transactions.

3 10. FFSC policies specifically prohibited its representatives from selling viatical settlement
4 contracts.

5 11. Respondent never disclosed his association with MBC or that he was offering for sale
6 and selling viatical settlement contracts.

7 12. On June 27, 2002, FFSC permitted Respondent to resign for violating FFSC's selling
8 away policies and for selling viatical settlement contracts.

9 **II.**

10 **CONCLUSIONS OF LAW**

11 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
12 Arizona Constitution and the Securities Act

13 2. Respondent offered or sold securities within or from Arizona, within the meaning of
14 A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

15 3. Respondent violated A.R.S. § 44-1841 by offering or selling securities that were
16 neither registered nor exempt from registration.

17 4. Respondent's conduct is grounds for a cease and desist order pursuant to A.R.S. §
18 44-2032.

19 5. Respondent's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
20 2032.

21 6. Respondent's conduct is grounds for administrative penalties under A.R.S. § 44-
22 2036.

23 **III.**

24 **ORDER**

25 THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and Respondents'
26 consent to the entry of this Order, attached and incorporated by reference, the Commission finds

1 that the following relief is appropriate, in the public interest, and necessary for the protection of
2 investors:

3 IT IS ORDERED, pursuant to A.R.S. § 44-2032, that Respondent, and any of Respondent's
4 agents, employees, successors and assigns, permanently cease and desist from violating the
5 Securities Act. Respondent shall not sell any securities in or from Arizona without being
6 registered in Arizona as dealer or salesman, or exempt from such registration. Respondent shall
7 not sell securities in or from Arizona unless the securities are registered in Arizona or exempt from
8 registration.

9 IT IS FURTHER ORDERED that Respondent comply with the attached Consent to Entry
10 of Order.

11 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that Respondent and the
12 marital community of James L. and Sydney J. Oppenheimer jointly and severally shall pay
13 restitution to investors shown on the records of the Commission in the amount of \$15,410.11.
14 Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be
15 placed in an interest-bearing account maintained and controlled by the Arizona Attorney General.
16 The Arizona Attorney General shall disburse the funds to investors in proportion to amount
17 invested. Any funds that the Attorney General is unable to disburse shall be transferred to the
18 general fund of the State of Arizona. If Respondent does not comply with this order of restitution,
19 any outstanding balance shall be in default and shall be immediately due and payable.

20 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that Respondent shall pay an
21 administrative penalty in the amount of \$5,000. Payment shall be made in full by cashier's check
22 or money order on the date of this Order, payable to the "State of Arizona." If Respondent does
23 not comply with this order for administrative penalties, any outstanding balance may be deemed in
24 default and shall be immediately due and payable.

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1 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the
2 Commission may bring further legal proceedings against that Respondent which may include
3 application to the Superior Court for an order of contempt.

4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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8 CHAIRMAN

COMMISSIONER

COMMISSIONER

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10 COMMISSIONER

COMMISSIONER

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12 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
13 Executive Secretary of the Arizona Corporation
14 Commission, have hereunto set my hand and caused the
15 official seal of the Commission to be affixed at the
16 Capitol, in the City of Phoenix, this _____ day of
17 _____, _____.

18 BRIAN C. McNEIL
Executive Secretary

19
20 DISSENT

21
22 DISSENT

23 This document is available in alternative formats by contacting Yvonne L. McFarlin, Executive
24 Assistant to the Executive Secretary, voice phone number 602-542-3931, E-mail
25 ymcfarlin@cc.state.az.us.

26 (egj)

CONSENT TO ENTRY OF ORDER

1
2 1. Respondents admit the jurisdiction of the Commission over the subject matter of
3 this proceeding. Respondents acknowledge that they have been fully advised of their right to a
4 hearing to present evidence and call witnesses and Respondents knowingly and voluntarily waive
5 any and all rights to a hearing before the Commission and all other rights otherwise available
6 under Article 11 of the Securities Act and Title 14 of the Arizona Administrative Code.
7 Respondents acknowledge that this Order to Cease and Desist, Order of Restitution, Order for
8 Administrative Penalties and Consent to same ("Order") constitutes a valid final order of the
9 Commission.

10 2. Respondents knowingly and voluntarily waive any right under Article 12 of the
11 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
12 resulting from the entry of this Order.

13 3. Respondents acknowledge and agree that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. Respondents acknowledge that they have been represented by an attorney in this
16 matter, they have reviewed this Order with their attorney and understand all terms it contains.

17 5. Respondents neither admit nor deny the Findings of Fact and Conclusions of Law
18 contained in this Order.

19 6. By consenting to the entry of this Order, Respondents agree not to take any action
20 or to make, or permit to be made, any public statement denying, directly or indirectly, any Finding
21 of Fact or Conclusion of Law in this Order or creating the impression that this Order is without
22 factual basis. Respondents will undertake steps necessary to assure that all of their agents and
23 employees understand and comply with this agreement.

24 7. While this Order settles this administrative matter between Respondent and the
25 Commission, Respondents understand that this Order does not preclude the Commission from
26

1 instituting other administrative proceedings based on violations that are not addressed by this
2 Order.

3 8. Respondents understand that this Order does not preclude the Commission from
4 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
5 that may be related to the matters addressed by this Order.

6 9. Respondents understand that this Order does not preclude any other agency or
7 officer of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
8 proceedings that may be related to matters addressed by this Order.

9 10. Respondent agrees that he will not apply to the state of Arizona for registration as a
10 securities dealer or salesman or for licensure as an investment adviser or investment adviser
11 representative at any time in the future.

12 11. Respondent agrees that he will not exercise any control over any entity that offers
13 or sells securities or provides investment advisory services within or from Arizona at any time in
14 the future.

15 12. Respondents acknowledge and understand that if they fail to comply with the
16 provisions of the order and this consent, the Commission may bring further legal proceedings
17 against them, including application to the Superior Court for an order of contempt.

18 13. Respondents agree that until restitution and penalties are paid in full, Respondents
19 shall notify the Director of the Securities Division within 30 days of any change in home address
20 and any change in Respondents' ability to pay amounts due under this Order. Respondents agree
21 that they shall provide the Commission with an updated financial statement every six months from
22 entry of this Order or when any change in their ability to pay restitution occurs. Respondents agree
23 that failure to perform any action in this paragraph shall result in their being in default with any
24 outstanding balance being immediately due and payable without notice or demand.

25 14. Respondents understand that default shall render them liable to the Commission for
26 its costs of collection and interest at the maximum legal rate.

15. Respondents agree and understand that if they fail to make any payment as required in the Order, any outstanding balance shall be in default and shall be immediately due and payable without notice or demand. Respondents agree and understand that acceptance of any partial or late payment by the Commission is not a waiver of default by the Commission.

16. Respondent agrees that he will continue to cooperate with the Securities Division including, but not limited to, providing complete and accurate testimony at any hearing in this matter and cooperating with the state of Arizona in any related investigation or any other matters arising from the activities described in this Order.

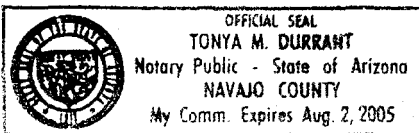
17. Respondent and Respondent's spouse acknowledge that any restitution, rescission or penalties imposed by this Order are obligations of the Respondent as well as the marital community.

18. Respondents consent to the entry of this Order and agree to be fully bound by its terms and conditions.

James L. Oppenheimer
(Respondent James L. Oppenheimer)

Sydney J. Oppenheimer
(Respondent Spouse Sydney J. Oppenheimer)

SUBSCRIBED AND SWORN TO BEFORE me this 29th day of October, 2004.



Tonya Durrant
NOTARY PUBLIC

My Commission Expires:

8-2-2005